Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	CC Docket No. 01-92
Developing a Unified Intercarrier	)	
Compensation Regime	)	

COMMENTS OF JOHN STAURULAKIS, INC.

May 23, 2005

TABLE OF CONTENTS

Summary

John Staurulakis, Inc. ("JSI") is a consulting firm representing the interests of rate-of-return regulated incumbent local exchange carriers ("LEC's"). While recognizing the need for reform of the existing intercarrier compensation regimes, JSI believes reform must follow an orderly process and work in concert with other proceedings that are before the Commission.

The Universal Service program for rate-of-return carriers that serves as a vital cost recovery mechanism for maintaining affordable basic local exchange service in high-cost areas is currently under review by a Federal-State Joint Board on Universal Service ("Joint Board") as the current universal service mechanism is scheduled to expire on June 30, 2006. Many of the proposals submitted in conjunction with this notice utilize a form of universal service support to recover costs associated with the existing intercarrier compensation regimes. The Joint Board and the Commission must come to closure on the future of the Universal Service program before the Commission can effectively evaluate the intercarrier compensation proposals that have been submitted.

In order to maintain the provision of affordable basic local exchange service to all Americans, any intercarrier compensation reform plan adopted by the Commission must be revenue neutral for rate-of-return LECs. JSI strongly believes that rate-of-return LECs should continue to be compensated for use of their networks, that the federal subscriber line charge should not be increased over the existing cap, that there should not be imposition of a "needs test," and any lost access revenue that cannot be recovered

through other mechanisms in a proposed plan should be recovered through a bulk access charge or universal service mechanism, that is not portable.

In order to provide rate-of-return carriers with the financial stability needed to effectively serve as telecommunications providers of last resort within their service areas, the Commission must continue to utilize an embedded cost pricing methodology. An embedded pricing methodology should continue whether future intercarrier compensation is based on a minutes-of-use, capacity or some other basis.

Accordingly, the existing procedures and rules prescribed by the Commission in Part's 32, 36, 64, 65, and 69 of the Code of Federal Regulations should be maintained. These rules have served the industry well since the inception of interstate access charges in 1984.

JSI believes that in order to have meaningful and successful intercarrier compensation reform, the Commission must first unify the existing intrastate and interstate exchange access rates. Without rate unification, the industry will continue to experience rate arbitrage due to disparities in intrastate and interstate switched access rates. The current composite interstate access rate which is developed by NECA based on embedded costs in accordance with existing Commission procedures and rules should continue. Once the Commission has obtained appropriate jurisdiction over intrastate access rates, such rates should be transitioned down to interstate access rate levels.

The use of nationwide local service benchmarks should be given consideration as part of a comprehensive intercarrier compensation reform package in conjunction with determining the level of universal service support required by rate-of-return carriers.

As JSI has previously demonstrated in this proceeding, neither the Telecommunications Act of 1996 (the "Act") nor Commission Rules require LECs to deliver traffic to an out-of-service area point of interconnection ("POI). Routing traffic to an out-of-service area POI places significant financial burdens on rural rate-of-return LECs.

Both Congress and the Commission preserved the pre-Act access charge regime and concluded that traffic between a LEC and a CMRS provider that originates and terminates within the same MTA is subject to reciprocal compensation, unless carried by an IXC. Therefore, IXC-carried traffic is subject to access charges and not reciprocal compensation. Furthermore, the Commission's equal access and dialing parity obligations require LECs to treat calls to toll points in a similar manner, irregardless of whether the call is a landline-to-wireless call or a landline-to-landline call. Accordingly, JSI encourages the Commission to reaffirm that the intraMTA rules do not apply to landline-originated calls that must be handed off to a caller's presubscribed IXC.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	CC Docket No. 01-92
Developing a Unified Intercarrier	)	
Compensation Regime	)	

COMMENTS OF JOHN STAURULAKIS, INC.

John Staurulakis, Inc. ("JSI") hereby responds to the invitation of the Federal Communications Commission ("FCC" or "Commission") to comment on proposals for comprehensive reform of existing intercarrier compensation regimes as well as interconnection issues, cost recovery and implementation issues associated with reform of the existing intercarrier compensation regimes.[1]

JSI is a consulting firm offering regulatory and financial services to more than two hundred independent rate-of-return regulated incumbent local exchange carriers ("LECs") throughout the United States. In addition to providing local exchange service, many of these LECs also provide other services, including long distance, broadband, wireless and video services, through separate divisions or affiliated companies. Among its consulting services, JSI assists these LECs with matters related to intercarrier compensation, including preparing and submitting jurisdictional cost studies and

1 *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, Further Notice of Proposed Rulemaking, FCC 05-33, rel. Mar. 3, 2005 ("FNPRM").

universal service fund data to the National Exchange Carrier Association ("NECA"), negotiating interconnection and traffic exchange arrangements and preparing and filing tariffs with the FCC and state commissions. Accordingly, JSI is well-versed in the issues on which the Commission seeks comment and is mindful of the ramifications that changes to existing intercarrier compensation rules may have on the services provided by independent LECs and their affiliated companies.

I. Because Universal Service is a Key Component in the Proposals, the Status of Existing Universal Service Mechanisms Must Be Known

Most of the proposals on which the Commission seeks comment provide that rate-of-return LECs will be able to utilize some form of additional universal service support, a bulk access charge, or a combination of the two to offset reduced access charges that are not recoverable otherwise.[2] Accordingly, it is necessary to be assured of the stability of universal support to rate-of-return LECs in any consideration of changes to the current intercarrier compensation regime. On average, JSI client companies receive approximately $19 per line, per month in federal high cost universal service support or 22 percent of regulated revenues.[3] With the current universal service mechanisms for rate-of-return carriers set to expire in a little over a year's time, however, this future is unknown making it difficult, if not impossible, to evaluate the merit of these proposals.

---

[2] *See, e.g.,* ICF (FNPRM at para. 43), EPG (FNPRM at para. 46); ARIC (FNRPM at para. 50); CBICC (FNPRM at para. 51); Home/PBT (FNPRM at para. 53); NASUCA (FNPRM at para. 56 & n. 205)

[3] Calendar year 2003 amounts of high-cost loop support (HCLS), local switching support (LSS), long term support (LTS) and interstate common line support (ICLS).

In May 2001, the Commission, with some modification, adopted a plan proposed by the Joint Board's Rural Task Force ("RTF") which provided that a modified embedded cost support mechanism for rural carriers would be maintained for a five-year period.[4] This five-year period will end on June 30, 2006. In anticipation of the end of this five-year period, in June 2004, the Commission released its Referral Order requesting the Federal-State Joint Board on Universal Service ("Joint Board") to "review the Commission's rules relating to the high-cost universal service support mechanisms for rural carriers and to determine the appropriate rural mechanism to succeed the five-year plan adopted in the Rural Task Force Order."[5] Subsequently, in August 2004, the Joint Board released a Public Notice seeking comment on certain FCC rules relating to high-cost universal service support for rural carriers serving in the states, territories and other holdings of the United States.[6] The formal comment period on the Public Notice closed on December 14, 2004. As of the date of this filing, the Joint Board has not submitted its recommendation to the Commission. After this recommendation has been submitted, the Commission must seek comment on the recommendation before the Commission can take any action. Accordingly, it appears that the future of the existing universal service support mechanisms for rate-of-return carriers will remain unknown at least during the formal comment period of the FNPRM proceeding.

---

[4] *See Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Fourteenth Report and Order and Twenty-Second Order on Reconsideration, *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers*, CC Docket No. 00-256, Report and Order, 16 FCC Rcd 11244, 11248 (2001) ("MAG Order").

[5] *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Order, FCC 04-125, rel. June 28, 2004 ("Referral Order") at 1.

[6] *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Public Notice, FCC 04J-2, rel. Aug 16, 2004. ("Public Notice").

With such a critical element of the proposals left unknown, commenters are unable to fully evaluate the impact of the proposals. Consequently, JSI urges the Commission to consider recommendations made by the Joint Board with regard to reform of the existing USF mechanisms before finalizing any changes to the existing intercarrier compensation regimes.[7]

II. Revenue Neutrality for Rate-of-Return LECs Must Be Maintained Under Any Intercarrier Compensation Reform Proposal Adopted by the Commission

In its FNPRM, the Commission seeks comment on "the extent to which the Commission should give rate-of-return LECs the opportunity to offset lost access charge revenue with additional universal service funding, additional subscriber line charges, or some combination of the two."[8] The Commission also seeks comment on whether subscriber line charges (SLCs) should be eliminated for rate-of-return carriers if they are eliminated for price-cap LECs.[9] As demonstrated below, it is imperative that any intercarrier compensation plan allow rate-of-return LECs to offset any lost access charges and thus remain "revenue neutral." JSI strongly believes that rate-of-return LECs should continue to be compensated for use of their networks, that SLCs should not be increased, that there should not be imposition of a "needs test," and any lost access revenue that cannot be recovered through other mechanisms in a proposed plan should be recovered through a

---

7 The Commission must also address whether or not a growing segment of the marketplace in the form of IP-based service providers will be required to contribute to the on-going maintenance and long-term viability of the existing PTN and universal service programs. *See IP-Enabled Services*, WC Docket No. 04-36, Notice of Proposed Rulemaking, FCC 04-28, rel. Mar. 10, 2004.

8 FNPRM at para. 108.

9 *Id.*

bulk access charge or universal service mechanism, that is not portable. JSI also believes that when included as a component of a comprehensive integrated intercarrier and universal service fund compensation package, local rate benchmarks could help ease inequities between different states between high and low cost of service states and that the financial impact on rural consumers must be taken into account in evaluating any intercarrier compensation plan.

A. Regardless of the Intercarrier Reform Measures Ultimately Adopted by the Commission, the Existing Embedded Cost Methodology Must be Maintained for Rate of Return Carriers

In order to maintain revenue neutrality for rate-of-return carriers, any revised intercarrier compensation regime ultimately adopted by the Commission must not disturb the embedded cost methodology currently utilized to calculate per minute of use switched and special access charge rates as well as interstate cost recovery amounts, including the federal high-cost universal service fund mechanisms – LSS, HCLS and ICLS for rate-of-return LECs. As previously recognized by the Commission, rate-of-return carriers generally serve high–cost regions and are "more dependent on their interstate access charge revenue streams and universal service support than price cap carriers and, therefore, more sensitive to disruption of those streams."[10] Accordingly, any change to the existing intercarrier compensation regime must provide these carriers "with certainty and stability" that this important cost recovery revenue stream will not be adversely impacted by any intercarrier reform proposals ultimately adopted by the Commission.[11]

---

[10] MAG Order at para. 131.

[11] *Id.*

Under today's interstate access charge regime, many rate-of-return carriers participate in the cost pools maintained by NECA. The pooling, unitary rate-of-return and tariff filing mechanisms currently in place have been instrumental in ensuring that subscribers served by rate-of-return carriers continue to receive access to affordable basic local exchange service as well as broadband services. Without these mechanisms, the Commission could not enforce many of the statutory requirements contained within the Telecommunications Act of 1996 and the administrative process of dealing with almost 1,000 rural carriers would be daunting. Currently, revenue neutrality within the interstate jurisdiction translates to recovery of a rate-of-return carrier's embedded costs as defined by Parts 32, 36 and 69 of the Commission's rules at the existing unitary rate-of-return as determined in accordance with Part 65 of the Commission's rules. On average, JSI clients recover approximately 32 percent of their regulated revenue from the existing interstate cost recovery mechanisms including SLCs, switched and special access charges, the LSS and ICLS universal service support mechanisms. Accordingly, the existing intercarrier embedded cost recovery mechanisms in place for rate-of-return carriers are extremely important and have functioned extremely well since the interstate access charge regime began back in 1984.

In the intrastate jurisdiction, the intercarrier compensation methodology utilized by rate-of-return carriers varies by state. Rate of return carriers in some states assess minute of use based charges that mirrored interstate switched access charge rates at a point in time. As states began to implement the interLATA and intraLATA dialing parity requirements, there became a need to establish a different cost recovery mechanism within the intrastate jurisdiction. In some states, rate-of-return carriers opted to become access providers whereby switched and special access charge rates were developed and utilized to bill the interexchange carriers (IXCs) for use of the rate-of-return carrier's network to originate and terminate calls for an IXC's retail customers. In such cases, the intrastate switched access rates were usually calculated by mirroring the existing interstate switched access charge rates and whatever residual intrastate access revenue requirement was not recovered via such mirroring, was recovered through implementation of a state SLC and or creation of a state high cost fund. In other states, rate-of-return carriers opted to become toll providers within the intrastate intraLATA jurisdiction and remain access providers in the intrastate interLATA jurisdiction. In the end, the rate designs adopted by various states when long distance competition emerged were based on the principles of revenue neutrality and the use of embedded costs. JSI maintains that the revenue neutrality principle that has guided the industry through past reform efforts to the intercarrier compensation regimes should continue. In addition, JSI maintains that the embedded cost methodology should continue for the determination of charges assessed to carriers for exchange access traffic, whether on a minutes-of-use basis or some other basis. JSI supports the recommendation put forth by NARUC regarding conversion of per-minute charges to a capacity based mechanism within five years.

B. The Commission Must Reject Use of a Forward Looking Cost Methodology to Determine Future Charges To Be Paid By Carriers Utilizing the Networks of Rate of Return Carriers

The Commission seeks comment on the appropriate pricing methodology to be utilized in accordance with a unified intercarrier compensation regime. Currently, the additional cost standard under section 252(d)(2) pertains to reciprocal compensation traffic in accordance with section 251(b)(5) of the Act. Several parties in this proceeding recommend use of a forward looking pricing methodology for determination of originating and terminating rates to be utilized in a revised intercarrier compensation regime.[12]

JSI urges the Commission to reject use of a forward-looking cost methodology for determination of access charges which are currently calculated using an embedded cost methodology. Under today's intercarrier compensation (access charge) regime, interstate access charges established for LECs subject to rate-of-return regulation reflect embedded costs based on the Commission's Part 32 accounting rules, Part 36 separations rules and Part 69 access rules. After accounting for any non-regulated activities in accordance with Part 64 of the Commission's rules, carriers subject to rate-of-return regulation are left with the actual costs associated with maintaining their operations.

With respect to the additional cost standard applicable to Section 251(b)(5) traffic, the standard is one that the Commission has previously determined to rely on a forward looking cost methodology. Unlike the existing Part 32, Part 36 and Part 69 rules and

---

12 *See, e.g., Notice of Written Ex Parte Presentation* filed by NARUC in CC Docket No. 01-92 (May 18, 2005)

procedures, there are no specific rules or defined standards to follow in order to determine the level of additional costs required to meet the definition found in the Act. In negotiating interconnection agreements with CMRS providers and CLECs, the lack of a consistent set of standards and procedures to calculate an additional cost based on a forward looking cost methodology precludes many ILECs from attempting to undertake such a study.

Accordingly, JSI believes that an embedded cost standard should be utilized in the calculation of any revised intercarrier compensation charges for both exchange access and traffic subject to Section 251(b)(5). As most of the industry plans contained in the FNPRM call for the establishment of different cost standards, JSI recommends that the Commission adopt continued use of an embedded cost standard for rate-of-return LECs in establishing charges for use of their networks to originate and terminate traffic. With respect to the additional cost standard contained in section 252 of the Act, to the extent necessary, JSI believes that the Commission should forebear applicability of the additional cost standard for rate-of-return ILECs.

Furthermore, utilizing a forward looking methodology would create a significant shift in existing regulated revenues for rate-of-return carriers from switched access to universal service funding. In calendar year 2003, JSI clients received approximately $24 per line, per month or 31 percent of their regulated revenue from intrastate and interstate switched access revenues (originating and terminating), on average. Utilizing the default rates established by NARUC in their most recent intercarrier compensation proposal, JSI clients would experience a decline in switched access revenues of approximately $21 per line, per month or a decline of approximately 87 percent. Such a significant shift would result in JSI clients receiving, on average, approximately seven percent of regulated revenues from carriers utilizing their networks and a whopping forty-six percent of regulated revenue from a combination of increases in SLC charges and a new federal universal service fund component.

JSI does not believe that any reform to the existing intercarrier compensation regimes should have as dramatic an impact as demonstrated by NARUC's latest proposal. By utilizing a forward looking cost methodology for the determination of all intercarier compensation charges, a significant portion of a rate-of-return carrier's actual underlying costs are moved to the USF or, to subscribers, via higher SLC charges.

Under NARUC's latest proposal, residential subscriber line charges could increase by as much as sixty-three percent over a four-year period while at the same time, carrier obligations for use of a rate-of-return carrier's network drop by approximately eighty-seven percent. JSI notes nothing equitable in the revenue shifts that occur under the NARUC proposal.

JSI does not agree with any revised change to the existing intercarrier compensation regimes that result in an increase to existing SLC caps, especially the residential SLC. For JSI clients, federal subscriber line charge revenue averages $7.15 per line, per month or approximately eight percent of regulated revenues. Thus, an increase of four dollars over a four year period in SLC charges would increase the overall percentage for JSI clients to approximately twelve and a half percent, all else being equal. To summarize, JSI client regulated revenues would appear as follows under NARUC's latest proposal: seven percent switched access, twelve and a half percent federal SLC, and thirty-eight percent from universal service. The remainder of regulated revenues would be made up of local service, special access and miscellaneous revenues.

With only seven percent of revenue being derived from carriers, JSI wonders whether such an approach is even worth considering. In addition to the increase in cost recovery being shifted to rural subscribers through imposition of higher SLCs, the universal service funding obligation to subscribers may also increase under NARUC's latest proposal.

C. The Need for Unification of Intercarrier Compensation Rates

The Act defines two separate and distinct types of traffic. The first is exchange access traffic defined under Section 251(g) and the second is traffic subject to reciprocal compensation under Section 251 (b)(5) of the Act. Due to the fact that exchange access traffic has historically been priced in accordance with an embedded methodology, the use of a forward looking methodology for the pricing of reciprocal compensation type traffic has created a large disparity between exchange access and reciprocal compensation traffic. In addition, the historical development of exchange access rates within the various states has led to the disparity in jurisdictional rates for such traffic.

JSI believes that while the Commission should strive to obtain parity between rates charged for exchange access and traffic subject to reciprocal compensation, the rules governing each regime should not be unified at this time. Accordingly, JSI recommends that usage subject to the exchange access rules remain under tariff and 251(b)(5) traffic subject to reciprocal compensation continue to be subject to the terms of negotiated interconnection agreements.

In order to have meaningful intercarrier compensation reform, the Commission must first unify the existing intrastate and interstate exchange access regimes. None of the plans and principles included in the FNPRM can achieve any degree of success in reforming the existing intercarrier compensation regimes unless the state and interstate jurisdictions are unified. JSI urges the Commission to explore all practical possibilities for unifying the existing state and interstate intercarrier compensation regimes. From a practical standpoint, the best approach towards unification would be to work in a cooperative effort with the states in order to arrive at a solution that satisfies all parties. In the absence of a cooperative effort put forth by all states to address intercarrier compensation reform, the Commission should explore all other alternatives at its disposal to address the matter.

Until such time as the Commission determines the most appropriate manner in which to unify the intrastate and interstate access charge regimes, JSI urges the Commission to refrain from reducing the interstate composite switched access charge rate for rate-of-return carriers to $0.0095 per minute as prescribed in the CALLS order. Currently, the existing interstate composite switched access charge rate is approximately $0.02 per minute for rate-of-return carriers participating in the NECA pools. Accordingly, the rate of $0.0095 is well below the actual embedded cost of switched access service as calculated by NECA and without any corresponding decrease in intrastate rates, would only create additional incentives for carriers purchasing switched access services from rate-of-return carriers to further arbitrage the differences in rates among the two jurisdictions. For JSI client companies, on average, a reduction in the interstate composite switched access charge rate to the CALLS rate would create a shift in interstate cost recovery of approximately $5 to $6 per access line, per month that would need to be recovered either through the assessment of higher SLCs and or from an existing or new USF mechanism.

Assuming the Commission is able to unify the existing exchange access regimes, JSI recommends that intrastate switched access charge revenues for interstate rate-of-return carriers be transitioned to corresponding interstate cost recovery mechanisms as administered by NECA and or USAC over a three to five year transition period. As such, amounts of intrastate access charge revenues derived from a per minute switching rate applied to intrastate exchange access minutes that are in excess of the corresponding interstate local switching rate per NECA Tariff F.C.C. No. 5, for both originating and terminating usage, be transitioned to the existing local switching support mechanism. All intrastate access revenues derived from imposition of an intrastate carrier common line rate would be transitioned to the existing ICLS mechanism since there is no interstate

CCL rate. Intrastate access revenues currently derived from intrastate transport charges over and above tariff interstate transport charge rates would be moved to a new, high-cost universal service fund mechanism.

The amounts of intrastate revenues transitioned to the interstate cost recovery mechanisms would not be portable to competitive ETCs since such amounts represent the recovery of a rate-of-return carrier's embedded costs. In addition, once intrastate amounts are transitioned to the existing federal high-cost mechanisms, such amounts would be able to grow annually by the rate of annual growth in a carrier's embedded interstate revenue requirement in accordance with the Commission's Part 36 and Part 69 rules or some form of existing growth mechanism such as the rural growth factor.

By establishing intrastate switched access rates at levels that correspond with existing interstate access rates, rate-of-return carriers will reflect intercarrier compensation levels for exchange access traffic utilizing embedded costs consistent with existing FCC rules. Such rates should also become the default rate levels established for rate-of-return carriers in conjunction with interconnection agreements negotiated in accordance with Section 252 of the Act. As such, JSI disagrees with the most recent positions taken by NARUC with regard to compensation for the terminating access function only and that Sections 251 and 252 of the Act should be utilized to unify the existing intercarrier compensation regimes. JSI maintains that the Commission should adopt a revised intercarrier compensation regime for rate-of-return carriers that continues to allow for recovery of a carrier's embedded costs associated with both the origination and termination of usage for another carrier. Moreover, the per minute rate of $0.002 for compensation of originating access as recommended by NARUC is inadequate for rate-of-return carriers whose embedded local switching rate currently stands at $0.012 per minute.

D. Nationwide Local Service Benchmarks Should Be Considered As Part of a Comprehensive Intercarrier Compensation Reform Plan

In the FNPRM, the Commission seeks comment on whether some sort of benchmark should be adopted for local retail rates within the state jurisdiction.[13] As a basis for determining the need for universal service support some of the plans advocate that the Commission establish national benchmark levels for local rates. It is argued that this will allow for the establishment of mandatory comparable rates nationwide and will aid in the development of a nationwide policy for recovery of local exchange network costs.

The use of local service benchmarks should be given consideration as a vehicle to assist in maintaining revenue neutrality, to assist in leveling out jurisdictional and regulatory concerns, assist in broadening the base of possible USF contributors, assist in minimizing the cost impact on both the federal and state universal service support programs and to reinforce equity of universal service fund distributions while at the same time upholding the overall concepts of universal service. In determining whether or not to establish a local service benchmark as part of any intercarrier compensation reform plan, the

[13] FNPRM at para. 108 (citing the ARIC proposal).

Commission must take into consideration the income levels and local calling scopes of subscribers residing in areas served by rate-of-return carriers.

III. Network Interconnection Issues

JSI agrees with the Commission that the designation of the point of interconnection ("POI") and cost associated with such POI designation is one of the most contentious issues in negotiating an interconnection or exchange of traffic agreement. In the FNPRM, the Commission has sought comment on issues related to the location of the POI and the allocation of transport costs between interconnected carriers. Rural LECs should not have an obligation to route calls to other telecommunications carriers' numbers to an out-of-service area POI. Even if the Commission determines that rural LECs have such an obligation, rural LECs should not be required to bear the cost associated with an out of service area POI.

As JSI has already demonstrated in this proceeding, Section 251(c)(2) of the Act does not require LECs to deliver traffic to an out of service area POI; therefore, the less burdensome section 251(a), which requires carriers to connect directly or indirectly, could not require an out of service area POI.[14] JSI has also demonstrated that Commission rules do not require rural LECs to route calls to an out-of-service area POI.[15] Routing traffic to an out-of-service area POI places significant financial burdens on rural LECs.

---

[14] *See Ex Parte* letter from JSI to Ms Tamara Preiss, Chief, Pricing Policy Division of the Wireline Competition Bureau, CC Docket Nos. 01-92 & 95-116 (Oct. 27, 2004) at 2-5.

[15] *Id.*

As demonstrated by the Missouri Public Service Commission Order granting certain rural LECs a suspension of intermodal number portability requirements, routing traffic to an out-of-service area POI places significant burdens on rural LECs. The Missouri PSC found that:

> "delivering calls outside of Petitioner's local exchange boundaries could impose a substantial economic burden upon Petitioner. If Petitioner is required to provide service outside of its certificated local service area, then additional legal and regulatory issues will arise related to modifying existing certificates and tariffs, and obtaining – through negotiation, and, if necessary, arbitration – facilities or arrangements with third-party carriers to port numbers and transport associated calls to remote locations outside of Petitioner's local exchange service area. The parties agree that a modification is required to avoid an undue economic burden on the Petitioner." [16]

In addition to these burdens, additional burdens are placed on rural LECs due to the Extended Area Service ("EAS") arrangements that many of the rural LECs have with RBOCs. In many cases, rural LECs serve bedroom communities adjacent to metropolitan areas. As a result of community of interest calling desires, rural LECs have implemented EAS calling into the metropolitan areas served by RBOCs. With the introduction of competition, CLECs have obtained numbering resources within the RBOC service areas and deployed virtual NXXs through which they mainly provide local dial-up ISP numbers to their ISP-customers. This practice has resulted in a significant financial burden on rural LECs whose customers utilize the EAS facilities in order to reach their dial-up ISP. A number of RBOCs, including BellSouth, have filed transit traffic tariffs applicable to rural LEC-originated traffic that transits BellSouth's network and is

[16] *See* Missouri Public Service Commission, *In the Matter of the Petition of Mid-Missouri Telephone Company for Suspension of the Federal Communications Commission Requirement to Implement Number Portability,* Case No. TO-2004-0455 (June 24, 2004)

destined to an ISP operated by a CLEC. As an example, BellSouth has filed a transit traffic tariff throughout its nine-state region that reflects a per-minute transit traffic rate of $0.003, which doubles to $0.006 on January 1, 2006.

Because neither the Act nor Commission rules require rural LECs to route calls to an out-of-service area POI, the Commission should clarify that a carrier's unilateral rating and routing designation for its numbering resources do not obligate an RLEC to honor such designations, or at the very least, clarify that the financial obligations for routing calls to an out-of-service area POI should not be placed on rural LECs.[17]

IV. CMRS Issues - Applicability of the IntraMTA Rule – Scope of Traffic Subject to Reciprocal Compensation

In the FNPRM, the Commission recognizes that there are different interpretations of the existing intraMTA rules. In the notice, the Commission stated that "In the event that the Commission retains the rule and interpret its scope in the more limited fashion advocated by the rural LECs, should the rule be changed so that all intraMTA traffic to or from a CMRS provider is subject to reciprocal compensation?" JSI believes and demonstrates that interpreting the existing rules in a manner other than the interpretation advocated by rural LECs is contrary to the Congress' intent and the Commission's dialing parity and equal access requirements. Therefore, rather than commenting on possible changes to the existing rules, JSI will provide justification for the rural LEC interpretation based on the existing rules.

---

[17] Sprint has filed a petition for declaratory ruling in this docket regarding rating and routing issues. The Commission should deny Sprint's Petition.

The Commission's reciprocal compensation rules do not apply to all traffic between LECs and CMRS providers that originate and terminate within the same MTA. Traffic between a LEC and CMRS carrier that, at the beginning of the call, originates and terminates within the same MTA, is subject to reciprocal compensation <u>unless it is carried by an IXC</u>.[18] Both Congress and the FCC preserved the pre-Act access charge regime and concluded that traffic between a LEC and a CMRS provider that originates and terminates within the same MTA is subject to reciprocal compensation, unless carried by an IXC. Therefore, IXC-carried traffic is subject to access charges and not reciprocal compensation. The access charge regime and reciprocal compensation regime are mutually exclusive and cannot apply to the same traffic.

The FCC discussed this distinction between transport and termination and access in its *Local Competition Order* when it stated,

> "…in the access charge regime, the long-distance caller pays long-distance charges to the IXC, and the IXC must pay both LECs for originating and terminating access service. By contrast, reciprocal compensation for transport and termination of calls is intended for a situation in which two carriers collaborate to complete a local call. In this case, the local caller pays charges to the originating carrier, and the originating carrier must compensate the terminating carrier for completing the call."[19]

With respect to local calling areas, the Commission clearly stated that for Section 51.701(b)(1) of the FCC's rules, a LEC's "local" calling area is the service area defined

---

[18] *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; CC Docket No. 96-98, Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, CC Docket No. 95-185, *First Report and Order,* FCC 96-325, 11 FCC Rcd 15499 (1996*). (Local Competition Order*), ¶ 1043.

[19] *Local Competition Order*, ¶ 1034.

by a state commission, within which calls are not subject to toll charges. Furthermore, the Commission stated that local service areas for CMRS carriers, by contrast, are generally referred to as MTAs. [20]

In the *Mountain Order*, the Commission indicated that a LEC-originated call to a CMRS carrier within the same MTA could still be a toll call:

> "…nothing prevents a LEC from charging its end users for intraLATA toll calls that originated on its network and terminate over facilities that are situated entirely within a single MTA."[21]

A. Pre-Act Access Traffic Carved Out by Section 251(g)

Congress' goal was to promote competition in all segments of the telecommunications industry, including wireless. Congress adopted a new model for interconnection that incorporated provisions from both a Senate bill and House amendment in a new section 251 of the Communications Act. Section 251(a) imposes a general duty on all telecommunications carriers to interconnect directly or indirectly with a requesting telecommunications carrier. New section 251(b) imposes several duties on all LECs. Specifically, section 251(b)(3) imposes a duty to provide dialing parity and 251(b)(5) imposes a duty to establish reciprocal compensation agreements for the transport and termination of traffic. In the Senate and House Joint Explanatory Statement of the Committee of Conference, under the NEW SECTION 251 – INTERCONNECTION, the

[20] *See Mountain Communications, Inc. vs. Qwest Communications International, Inc.*, DA 02-250, *Memorandum Opinion and Order*, released February 4, 2002, (*Mountain Order*) Note 11.

[21] *Mountain Order*, ¶ 11.

following statement clearly indicates that the Congress did not intend to change the access charge regime in place prior to the 96 Act:

> "New Section 251(a) imposes a duty on all local exchange carriers possessing market power in the provision of telephone exchange service or exchange access service in a particular local area to negotiate in good faith and to provide interconnection with other telecommunications carriers that have requested interconnection with providing telephone exchange service or exchange access service. The obligations and procedures prescribed in this section do not apply to interconnection arrangements between local exchange carriers and telecommunications carriers under section 201 of the Communications Act for the purpose of providing interexchange service, and nothing in this section is intended to affect the Commission's access charge rules**."**

Section 251(g) of the Act imposes obligation on all LECs to continue provision of exchange access:

> On and after the date of enactment of the Telecommunications Act of 1996, each local exchange carrier, to the extent that it provides wireline services, shall provide exchange access, information access, and exchange services for such access to interexchange carriers and information service providers in accordance with the same equal access and nondiscriminatory interconnection restrictions and obligations (including receipt of compensation) that apply to such carrier on the date immediately preceding the date of enactment of the Telecommunications Act of 1996, under any court order, consent decree, or regulation, order, or policy of the Commission, until such restrictions and obligations are explicitly superseded by regulations prescribed by the Commission after such date of enactment. (Emphasis added)

B. The Commission's Local Competition Order Addresses ILEC Obligations Under Section 251(b)(5) vs. 251(g) of the Act:

In the *Local Competition Order*, the Commission defined a CMRS local service area as traffic that originates and terminates within the same MTA for the purpose of compensation only. However, the Commission did not stop at this conclusion without also specifying certain qualifying conditions. Based on the complete reading and understanding of all of the relevant rulings and orders, it is clear that the compensation regime applicable to IXC-carried traffic is access charges and not reciprocal compensation.

A complete reading of paragraph 1043 confirms that intra-MTA CMRS traffic does not automatically activate reciprocal compensation obligations.

> As noted above, CMRS providers' license areas are established under federal rules, and in many cases are larger than the local exchange service areas that state commissions have established for incumbent LECs' local service areas. We reiterate that traffic between an incumbent LEC and a CMRS network that originates and terminates within the same MTA (defined based on the parties' locations at the beginning of the call) is subject to transport and termination rates under section 251(b)(5), rather than interstate or intrastate access charges. Under our existing practice, most traffic between LECs and CMRS providers is not subject to interstate access charges unless it is carried by an IXC, with the exception of certain interstate interexchange service provided by CMRS carriers, such as some "roaming" traffic that transits incumbent LECs' switching facilities, which is subject to interstate access charges. Based on our authority under section 251(g) to preserve the current interstate access charge regime, we conclude that the new transport and termination rules should be applied to LECs and CMRS providers so that CMRS providers continue not to pay interstate access charges for traffic that currently is not subject to such charges, and are assessed such charges for traffic that is currently subject to interstate access charges." (Emphasis Supplied)

The Commission did not replace access charges with reciprocal compensation for landline-to-mobile calls carried by IXCs. The Commission has prescribed two mutually exclusive compensation regimes: the access-charge regime, which existed prior to the Act, and the post-Act reciprocal compensation regime for local traffic. As discussed above, Congress expressly preserved the access charge regime in Section 251(g) of the

Act. The new reciprocal compensation rules adopted by the Commission did not replace the existing access charge rules. Access charges apply to IXC-carried traffic, while reciprocal compensation applies to local service providers such as LECs, CLECs, and CMRS providers.

Furthermore, the reciprocal compensation and access charge regimes cannot apply to the same traffic.[22] Instead, Congress and the Commission clearly preserved the access charge regime and stated that reciprocal compensation does not apply to traffic that was subject to access charges prior to the Act. A landline-originated call that was rated as a toll call and subject to access charges prior to the Act and the Commission's orders, continues to be rated as a toll call subject to access charges under the Act, and nothing in the Act or the Commission's rules changed this treatment.

In addition, the Eighth Circuit Court of Appeals (Eighth Circuit) has affirmed the principle that the standards and obligations set forth in Section 251 are not intended to supersede the Commission's authority over the services enumerated under Section 251(g). The Eighth Circuit concluded that the Act contemplates that "LECs will continue to provide exchange access to IXCs for long-distance service, and continue to receive payment, under the pre-Act regulations and rates."[23] This applies to all IXC traffic, without any exception to be made for traffic to a CMRS provider. Therefore, the carve-

---

22 *See Competitive Telecommunications Ass'n v. FCC,* 117 F.3d 1068, 1072-73 (8th Cir. 1997).

23 *Competitive Telecommunications Ass'n v. FCC*, 117 F.3d 1073 (8th Cir. 1997) (emphasis added). The court continued that the Commission would be free under section 201 to alter its traditional regulatory treatment of interstate access service in the future, but that the standards set out in sections 251 and 252 would not be controlling.

out of IXC traffic applies to landline-originated calls to points outside LEC local calling areas, regardless of whether the calls are made to wireline or wireless subscribers.

C. Dialing Parity and Equal Access Obligations

In addition to the foregoing, LECs have equal access and dialing parity obligations that require them to hand-off long distance calls to the presubscribed IXC of the customer's choice. When a call is made to a number outside of the local calling scope of the LEC, it is rated as toll and the LEC is obligated to hand-off the call to the pre-subscribed IXC of the calling customer.

The dialing parity and equal access obligations require LECs to route long distance calls to IXCs. Section 251(b)(3) of the Act imposes dialing parity obligations on all LECs. These obligations are codified in 47 C.F.R. Sections 51.205 to 51.209. The local dialing parity rule requires a LEC to allow local calling within its local calling area notwithstanding the identity of the called party's telecommunications service provider. Therefore, LECs cannot treat a call to a CMRS providers' NPA/NXX that is within the MTA as local when calls to wireline carriers numbering resources within the same rate center within the MTA are treated as toll, in accordance with the LEC's general subscriber service tariff. Additionally, the toll dialing parity rules in Section 51.209(b) state that:

> A LEC shall implement toll dialing parity through a presubscription process that permits a customer to select a carrier to which all designated calls on a customer's line will be routed automatically.

This rule clearly requires a LEC to treat calls to toll points the same regardless of whether the call is a landline-to-wireless call or a landline-to-landline call.

Accordingly, JSI urges the Commission to forebear rural LECs from operational and financial responsibility of routing traffic to an outside service area POI. In addition, JSI encourages the Commission to reaffirm that the intraMTA rules do not apply to landline-originated calls that are handed off to the presubscribed IXC of the calling party , in accordance with the existing equal access and dialing parity obligations.

V. Conclusion

JSI urges the Commission to exercise care in attempting to unify and reform the existing intercarrier compensation regimes. While some level of reform is no doubt required, JSI believes that the Commission must await any recommendations put forth by the Federal State Joint Board on Universal Service before finalizing any intercarrier compensation reform plans. The Commission must ensure that any intercarrier reform plan allows rate-of-return carriers to recover their embedded costs from carriers that utilize their networks for the origination or termination of traffic and that any existing access revenues not recoverable from carriers, be recovered from non portable, universal service funds. The Commission should consider the feasibility of instituting local service rate benchmarks with regard to the recovery of costs from universal service funds. Finally, carriers must be required to establish a point of interconnection within the local service area of a rate-of-return carriers for purposes of exchanging traffic on a local basis and existing meet points pertaining to access traffic should remain unchanged.

Respectfully submitted,

May 23, 2005

John Staurulakis, Inc.

/s/ Manny Staurulakis

President
John Staurulakis, Inc.
7852 Walker Drive, Suite 200
Greenbelt, Maryland 20770